

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

60176

FILE: B-183287

DATE: November 17, 1975

MATTER OF: Kappa Systems, Inc.

97722

DIGEST:

Based on review of written record of proposal evaluation, it is concluded that protester's proposal was properly found to be outside competitive range. Conclusion is confirmed by parties' comments at protest conference concerning reasons for excluding protester from competitive range.

In October 1974, the Health Services Administration of the Department of Health, Education, and Welfare (HEW) issued RFP No. HSA 240-BCHS-12(5) for the proposed award of a cost reimbursement contract for the review of "marketing strategies" involved in developing Health Maintenance Organizations. The RFP advised offerors of the relative weights of the criteria which would be used in evaluating proposals for the award of the contract. Specifically, advice was given that 50 out of a total 100 points assigned for scoring offerors' responses to the evaluation criteria would be allotted to "qualifications and deployment" of personnel.

Five proposals, including a response from Kappa Systems, Inc. were received by the December 9, 1974, closing date set for receipt of initial proposals. Evaluation of technical proposals was then started. On December 13, 1974, "technical clarification" was sought from all five of the offerors who submitted proposals. In Kappa's case, HEW asked that the company, at its earliest convenience, furnish "copies of each of the eighteen consultants' written commitments referred to on Page B-1 of your technical proposal."

Technical evaluation of all proposals and clarifications continued into early 1975. As a result of the evaluation, HEW's evaluation panel determined that Kappa had submitted an unacceptable proposal because of significant weaknesses in qualifications of proposed employees. Notwithstanding the finding of unacceptability, the contracting officer questioned the chairman of the technical

evaluation committee in order to probe the soundness of the finding. The Chairman pointed out that three of the four reviewers had rated Kappa lowest in the personnel area, that Kappa's proposal needed no further clarification, and that, without doubt, the proposal was unacceptable. Because of this response, the contracting officer determined to exclude Kappa from the competitive range. Two offerors, Charter Medical Development Corporation and Group Health Association of America, Inc., were found to be in the competitive range on February 19, 1975.

Kappa then attempted to hand-deliver a "modification" of its proposal to the contracting officer on February 20, 1975. The modification was needed, in Kappa's view, because of "[r]ecent major changes in the [concern's] corporate structure" which had the "effect of increasing our total cost." The contracting officer advised Kappa, however, that its proposed modification could not be considered because of the "Late Proposals and Modification of Proposals" provision of the RFP. The clause provided, in part, that a modification would not be considered unless received before a determination of competitive range had been made.

Having excluded three of the five offerors from consideration, HEW then proceeded with further negotiations with the two remaining offerors. After these negotiations were concluded, and after a rescoring of all proposals confirmed the soundness of the prior competitive range determinations, HEW made an award on July 15, 1975, to Charter Medical Development Corporation at an estimated cost of \$208,016.

Much of the argument made by Kappa before our Office concerns the alleged questionable soundness of HEW's decision to exclude Kappa's proposal from the competitive range. HEW has refused release under the Freedom of Information Act, 5 U.S.C. § 552 (1970), of written documentation to Kappa concerning this determination. At an informal conference at our Office on the protest, Kappa was informed, however, in general terms, of the particular findings of those HEW employees who participated in the evaluation of the company's proposal. Further, our Office will consider relevant agency documents in deciding a protest even though the documents are not disclosed to a protester by the agency. RCI Microfilm, B-182169, April 10, 1975, 75-1 CPD 220.

Based on review of the written record of proposal evaluation, we conclude that Kappa's proposal was properly found to be outside the competitive range. This conclusion is confirmed by the parties' comments at our protest conference concerning the reasons for excluding Kappa from the competitive range for the purchase.

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It is our further conclusion that HEW properly rejected Kappa's proposed modification (which contained major revisions, required by corporate restructuring, to its initial proposal) under the Late Proposals and Modification of Proposals clause of the RFP. Moreover, there is no evidence in the agency record before us, contrary to Kappa's suggestion, that Kappa was denied an opportunity by authorized HEW employees to submit a modification to its proposal prior to the time the competitive range was finally established.

Finally, it is our view that the record does not support Kappa's additional allegation that other offerors were improperly allowed to modify their technical proposals during the course of negotiations. On the contrary, these other offerors were only given the opportunity (as was Kappa) to clarify their written technical proposals rather than make substantive changes as Kappa attempted to do after the competitive range for the purchase had been determined.

Protest denied.


Deputy Comptroller General
of the United States